

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WESTERN WASHINGTON PAINTERS
DEFINED CONTRIBUTION PENSION
PLAN TRUST; EMPLOYEE PAINTERS'
TRUST HEALTH & WELFARE FUND;
WESTERN WASHINGTON PAINTERS
APPRENTICESHIP AND TRAINING
TRUST; WESTERN WASHINGTON
PAINTERS LABOR MANAGEMENT
COOPERATION TRUST FUND;
INTERNATIONAL BROTHERHOOD OF
PAINTERS AND ALLIED TRADES
UNION; INTERNATIONAL
BROTHERHOOD OF PAINTERS AND
ALLIED TRADES PAINTERS DISTRICT
COUNCIL NO. 5,

Plaintiffs,

v.

CAPITOL CITY ENTERPRISES, INC. a
Washington corporation, JOHN B. YATES
and JANE DOE YATES, husband and wife,
and the marital community comprised thereof;
PATRICK A. WEST and JANE DOE WEST,
husband and wife, and the marital community
comprised thereof; DENNIS L. MILLER and
JANE DOE MILLER, husband and wife, and
the marital community comprised thereof;
JOSEPH T. POLLARI

CASE NO. C07-5190RJB

ORDER DENYING WITHOUT
PREJUDICE MOTION FOR
ORDER OF DEFAULT

1 and JANE DOE POLLARI, husband and
 2 wife, and the marital community comprised
 3 thereof; MAURICE A. SCHOUVILLIER and
 4 JANE DOE SCHOUVILLIER, husband and
 5 wife, and the marital community comprised
 6 thereof,

7 Defendants.

8 This matter comes before the Court on the plaintiffs' Motion for Order of Default (Dkt.
 9). The Court has considered the pleadings filed in support of the motion and the remainder of the
 10 file herein.

11 **I. BACKGROUND**

12 According to the complaint, the plaintiffs are joint labor-management employee benefit
 13 trust funds ("Plaintiff Trust Funds") created pursuant to §302(c)(5) of the Labor-Management
 14 Relations Act, 29 U.S.C. §186(c)(5). Dkt. 2 at 2. The plaintiffs allege violations of a collective
 15 bargaining agreement, certain trust agreements, and the Employee Retirement Income Security
 16 Act of 1974 ("ERISA"), 29 U.S.C. §1001, *et seq.*¹

17 On May 17, 2007, counsel appeared on behalf of the defendants. Dkt. 7. On June 15,
 18 2007, the plaintiff moved for entry of default. Dkt. 9.

19 **II. DISCUSSION**

20 The entry of default is governed by Federal Rule 55, which provides as follows: "When a
 21 party against whom a judgment for affirmative relief is sought has failed to plead or otherwise
 22 defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the
 23 clerk shall enter the party's default." Fed. R. Civ. P. 55(a). Local Rule 55 also governs the entry of
 24 default:

25 Upon motion by a party noted in accordance with CR 7(d)(1) and supported by affidavit

26
 27 ¹The complaint refers to "Exhibit A," which apparently contains portions of the collective bargaining
 28 agreement, the trust agreements, or both. The complaint is not accompanied by any exhibits, and "Exhibit A" does
 not appear to be part of the electronic file.

ORDER

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1 or otherwise, the clerk shall enter the default of any party against whom a judgment for
 2 affirmative relief is sought but who has failed to plead or otherwise defend. The affidavit
 3 shall specifically show that the defaulting party was served in a manner authorized by Fed.
 4 R. Civ. P. 4. A motion for entry of default need not be served on the defaulting party.
 5 However, in the case of a defaulting party who has entered an appearance, the moving
 6 party must give the defaulting party written notice of the requesting party's intention to
 7 move for the entry of default at least five judicial days prior to filing its motion and must
 8 provide evidence that such notice has been given in the motion for entry of default.

9 Local Rule CR 55(a). As explained more fully below, the Court should deny the motion for failure
 10 to comply with Local Rule CR 55(a).

11 First, the plaintiffs' motion is accompanied by an affidavit that does not "specifically show
 12 that the defaulting party was served in a manner authorized by Fed. R. Civ. P. 4." *See* Local Rule
 13 CR 55(a); Dkt. 9 at 3. As evidence that the defendants were properly served, the affidavit
 14 accompanying the motion refers to "Declarations of Service attached as Exhibit A." Dkt. 9 at 3.
 15 No exhibits are attached to the motion or to the affidavit. It appears that Defendant Capitol City
 16 Enterprises, Inc.'s registered agent was personally served on May 7, 2007. Dkt. 5 (Declaration of
 17 Service). It is unclear whether the remaining defendants were served in a manner authorized by
 18 Federal Rule 4. *See* Dkt. 8 at 2 (Declaration of Service providing that copies of the Summons and
 19 Complaint were mailed to the defendants' counsel on May 23, 2007); Dkt. 7 (Defendants'
 20 counsel's notice of appearance providing for service, not including original process, on counsel).

21 Second, the plaintiffs' motion does not include evidence that the allegedly defaulting party
 22 was provided written notice of the plaintiffs' intention to move for the entry of default at least five
 23 judicial days before the motion was filed. *See* Local Rule CR 55(a).

24 The plaintiffs having failed to demonstrate their compliance with Local Rule CR 55 (a),
 25 the Court should deny the motion without prejudice.

26 **III. ORDER**

27 Therefore, it is hereby

28 **ORDERED** that the plaintiffs' Motion for Order of Default (Dkt. 9) is **DENIED**

without prejudice.

The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

DATED this 19th day of June, 2007.


Robert J Bryan
United States District Judge